

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into this ____ day of October, 2018 by and between:

"Plaintiff" Catilyn Abercrombie

"Defendants" Cumberland County Board of Education,
Sheriff Earl R. Butler, Vernon Lee Spruill,
Patricia Ramos, Kim Boone, Julee Cook,
Raelyne Houle, Delores Waters, Shawn Mincik,
Sandy Woodham, and Sheriff Ennis W. Wright

"Insurer" The Netherlands Insurance Company
Peerless Insurance Company
Liberty Mutual Insurance Company

Recitals

A. Plaintiff filed a complaint against Cumberland County Board of Education, Sheriff Earl R. Butler, Vernon Lee Spruill, Patricia Ramos, Kim Boone, Julee Cook, Raelyne Houle, Delores Waters, Shawn Mincik, Sandy Woodham, and Sheriff Ennis W. Wright ("Defendants") in the Superior Court, County of Cumberland, State of North Carolina, Court Action No. 16-CVS-7878 (the "Complaint"), which Complaint arose out of certain alleged negligent act or omissions by Defendants. In the Complaint, Plaintiff sought to recover monetary damages as a result of that certain occurrence on or about October 24, 2011 at or near Cape Valley High School in the State of North Carolina, which resulted in physical injuries and personal injuries to Plaintiff.

B. Insurer is the liability insurer of the Defendants, and as such, would be obligated to pay any claim made or judgment obtained against Defendants, which is covered by its policy with Defendants.

C. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which have, or might be made, by reason of the incident described in Recital A above, upon the terms and conditions set forth below:

Agreement

The parties agree as follows:

1.0 Release and Discharge

1.1 In consideration of the payments set forth in Section 2, Plaintiff hereby completely releases and forever discharges Defendants and Insurer from any and all past, present or future claims, demands, obligations, actions, causes of action,

wrongful death claims, rights, damages costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of or may in any way grow out of the incident described in Recital A above, including, without limitation, any and all known or unknown claims for bodily and personal injuries to Plaintiff, or any future wrongful death claim of Plaintiff's representatives or heirs, which have resulted or may result from the alleged acts or omissions of the Defendants.

1.2 This release and discharge shall also apply to Defendants' and Insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firm or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 This release, on the part of the Plaintiff, shall be a fully binding and complete settlement among the Plaintiff, the Defendants and the Insurer, and their heirs, assigns and successors.

1.4 The Plaintiff acknowledges and agrees that the release and discharge set forth above is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect Plaintiff's decision to enter into this Settlement Agreement. The Plaintiff further agrees that Plaintiff has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than the Plaintiff believes. It is understood and agreed to by the parties that this settlement is a compromise of a doubtful and disputed claim, and the payments are not to be construed as an admission of liability on the part of the Defendants, by whom liability is expressly denied.

1.5 As further consideration for the payments set forth in Section 2, Plaintiff agrees to accept full responsibility to satisfy all liens and/or subrogation claims asserted by any medical providers, medical insurers, and county, state, federal, or other governmental agencies, and to indemnify and hold harmless and, if necessary, defend Defendants and Insurer for any subrogation liens asserted by medical providers, insurers, and/or any county, state, federal, or other governmental agency related to this matter.

2.0 Payments

In consideration of the release set forth above, the Insurer on behalf of the Defendants agree to pay to the individual(s) named below ("Payee(s)") the sums outlined below:

2.1 Payments due at the time of settlement as follows:

\$1,700,000.00 payment to Catilyn Abercrombie and Brent Adams & Associates.

2.2 \$300,000.00 payment by The Netherlands Insurance Company to fund an annuity that will provide Periodic Payments according to the schedule as follows (the "Periodic Payments"):

Payee: Catilyn Abercrombie

\$800.00 per month for her lifetime with 40 years (480 payments) guaranteed, commencing 4/22/2019 with the last guaranteed payment on 3/22/2059.

\$10,000.00 guaranteed lump sum payment on 4/22/2026;

\$20,000.00 guaranteed lump sum payment on 4/22/2031;

\$40,000.00 guaranteed lump sum payment on 4/22/2036; and

\$56,545.91 guaranteed lump sum payment on 4/22/2041.

All sums set forth herein constitute damages, other than punitive damages, on account of personal physical injuries and physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

3.0 Payee's Rights to Payments

Plaintiff acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Plaintiff or any Payee; nor shall the Plaintiff or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

4.0 Payee's Beneficiary

Any payments to be made after the death of Catilyn Abercrombie pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Payee to the Assignee. If no person or entity is so designated by Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

5.0 Consent to Qualified Assignment

5.1 Plaintiff acknowledges and agrees that The Netherlands Insurance Company may make a "Qualified Assignment" within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of The Netherlands Insurance Company's liability to make the Periodic Payments set forth in Section 2.2 to USAA Annuity Services Corporation (the "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of The Netherlands

Insurance Company (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

5.2 Any such assignment, if made, shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Defendants and The Netherlands Insurance Company from the Periodic Payment Obligation assigned to the Assignee. The Plaintiff recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Defendants and The Netherlands Insurance Company shall thereupon become final, irrevocable and absolute.

6.0 Right to Purchase an Annuity

The Netherlands Insurance Company, itself or through its Assignee, reserve the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from USAA Life Insurance Company (the "Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have the Annuity Issuer mail payments directly to the Payee. The Plaintiff shall be responsible for maintaining a current mailing address with the Annuity Issuer.

7.0 Discharge of Obligation

The obligation of the Assignee to make each Periodic Payment shall be discharged upon mailing of a valid check or electronic funds transfer in the amount of such payment on or before the due date to the last address or bank account on record for the Payee named in Section 2.2 of this Settlement Agreement. If the Payee or designated beneficiary notifies the Assignee that any check or electronic funds transfer was not received, the Assignee shall direct the Annuity Issuer to initiate stop payment action and, upon confirmation that the check was not previously negotiated or electronic funds transfer deposited, the Annuity Issuer shall process a replacement payment in the amount of such payment to the designated address or bank account of the Payee.

8.0 Attorney's Fees

Each party hereto shall bear all attorney fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement, the matters and documents referred to herein, and all related matters.

9.0 Delivery of Dismissal with Prejudice

Concurrently with the execution of this Settlement Agreement, counsel for the Plaintiff shall deliver to counsel for the Defendants or counsel for the Insurer an executed, filed-stamped Dismissal with Prejudice of the Complaint.

10.0 Representation of Comprehension of Document

In entering into this Settlement Agreement the Plaintiff represents that Plaintiff has relied upon the advice of her attorneys, who are attorneys of her own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to Plaintiff by her attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Plaintiff.

11.0 Warranty of Capacity to Execute Agreement

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiff has the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

12.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina.

13.0 Additional Documents

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions, which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

14.0 Entire Agreement and Successors in Interest

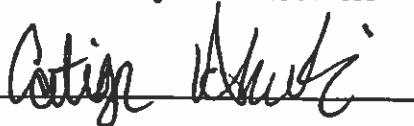
This Settlement Agreement contains the entire agreement between the Plaintiff and the Insurer with regard to the matters set forth in it and shall be binding upon and endure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

15.0 Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the parties.

Plaintiff: Catilyn Abercrombie

By: _____



Date: _____

10-16-18

Approved as to form and content:

By: 
Plaintiff's Counsel

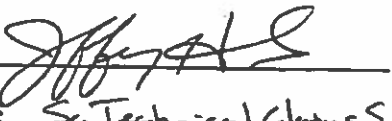
Date: 10-15-18

Insurer: **The Netherlands Insurance Company**

By: 
Title: Sr. Technical Claims Specialist

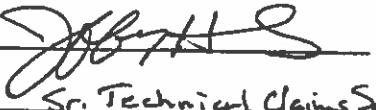
Date: 10/25/18

Insurer: **Peerless Insurance Company**

By: 
Title: Sr. Technical Claims Specialist

Date: 10/25/18

Insurer: **Liberty Mutual Insurance Company**

By: 
Title: Sr. Technical Claims Specialist

Date: 10/25/18